

Family Justice Subcommittee Amendment #1

Amendment No. 1 to HB0460

**DeBerry J
Signature of Sponsor**

AMEND Senate Bill No. 645

House Bill No. 460*

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 36-3-601, is amended by deleting items (3), (5) and (7) and substituting instead the following:

(3) "Domestic abuse" means committing abuse against a victim as defined in subsection (8);

(5) "Petitioner" means the person alleging domestic abuse, sexual assault or stalking in a petition for an order for protection;

(7) "Respondent" means the person alleged to have abused, stalked or sexually assaulted another in a petition for an order for protection;

SECTION 2. Tennessee Code Annotated, Section 36-3-601, is amended by adding the following new numbered items:

() "Abuse" means inflicting or attempting to inflict physical injury on an adult or minor by other than accidental means, placing an adult or minor in fear of physical harm, physical restraint, or malicious damage to the personal property of the abused party

() "Stalking victim" means any person, regardless of the relationship with the perpetrator, who has been subjected to, threatened with or placed in fear of the offense of stalking as defined in § 39-17-315;

() "Sexual assault victim" means any person, regardless of the relationship with the perpetrator, who has been subjected to, threatened with or placed in fear of any form of rape, as defined in §§ 39-13-502, 39-13-503, 39-13-506 or 39-13-522, or sexual battery as defined in §§ 39-13-504, 39-13-505, or 39-13-527;

SECTION 3. Tennessee Code Annotated, Section 36-3-602, is amended by deleting subsections (a) and (c) in their entirety and substituting instead the following:

(a) Any victim who has been subjected to, or threatened with or placed in fear of, domestic abuse, stalking, or sexual assault may seek a relief under this part by filing a sworn petition alleging such domestic abuse, stalking, or sexual assault by the respondent.

(c) Venue for a petition for an order of protection and all other matters relating to orders of protection shall be in the county where the respondent resides or the county in which the domestic abuse, stalking or sexual assault occurred. If the respondent is not a resident of Tennessee, the petition may be filed in the county where the petitioner resides.”

SECTION 4. Tennessee Code Annotated, Section 36-3-605, is amended by deleting subsections (a) and (b) in their entirety and substituting instead the following:

(a) Upon the filing of a petition under this part, the courts may immediately, for good cause shown, issue an ex parte order of protection. An immediate and present danger of abuse to the petitioner shall constitute good cause for purposes of this section.

(b) Within fifteen (15) days of service of such order on the respondent under this part, a hearing shall be held, at which time the court shall either dissolve any ex parte order which has been issued, or shall, if the petitioner has proved the allegation of domestic abuse, stalking or sexual assault by a preponderance of the evidence, extend the order of protection for a definite period of time, not to exceed one (1) year unless a further hearing on the continuation of such order is requested by the respondent or the petitioner; in which case, on proper showing of cause, such order may be continued for a further definite period of one (1) year after which time a further hearing must be held for any subsequent one-year period. Any ex parte order of protection shall be in effect until the time of the hearing and, if the hearing is held within fifteen (15) days of service of such order, the ex parte order shall continue in effect until the entry of any subsequent order of protection issued pursuant to § 36-3-609. If no ex parte order of protection has been issued as of the time of the hearing, and the petitioner has proven the allegation of domestic abuse, stalking or sexual assault by a preponderance of the evidence, the

court may, at that time, issue an order of protection for a definite period of time, not to exceed one (1) year.

SECTION 5. Tennessee Code Annotated, Section 36-3-606, is amended by deleting from subsection (a) the following language:

(a) A protection order granted under this part to protect the petitioner from domestic abuse may include, but is not limited to:

(1) Directing the respondent to refrain from committing domestic abuse or threatening to commit domestic abuse against the petitioner or the petitioner's minor children;

and substituting instead the following:

(a) A protection order granted under this part to protect the petitioner from domestic abuse, stalking or sexual assault may include, but is not limited to:

(1) Directing the respondent to refrain from committing domestic abuse, stalking or sexual assault or threatening to commit domestic abuse, stalking or sexual assault against the petitioner or the petitioner's minor children;

SECTION 6. Tennessee Code Annotated, Section 36-3-613, is amended by deleting the section in its entirety and substituting instead the following:

(a) The petitioner's right to relief under this part is not affected by petitioner's leaving the residence or household to avoid domestic abuse, stalking or sexual assault.

(b) The petitioner's right to relief under this part is not affected by use of such physical force against the respondent as is reasonably believed to be necessary to defend the petitioner or another from imminent physical injury, domestic abuse, or sexual assault.

SECTION 7. This act shall take effect July 1, 2005, the public welfare requiring it.